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202-307-6570 (v)
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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Dennis J. Sprenger; State of Arizona *ex rel*
Department of Economic Security; Bank of
Arizona; Ditech Financial LLC f/k/a Green
Tree Servicing, LLC;

Defendants.

Case No. CV-20-0026-PHX-MTL

Motion to Substitute pursuant to Fed. R.
Civ. P. 25(c)

Plaintiff the United States of America (“United States”), by and through undersigned counsel, hereby moves to substitute (add) New Residential Mortgage LLC as a party in this action for (and remove) Ditech Financial LLC f/k/a Green Tree Servicing, LLC pursuant to Fed. R. Civ. P. 25(c).

Background. This action seeks to foreclose on real property owned by Dennis J. Sprenger, specifically 5109 E. Juniper Ave, Scottsdale, Arizona 85254 (APN 215-32-557) (“Subject Property”), in order to pay outstanding tax liabilities owed by Mr. Sprenger pursuant to 26 U.S.C. § 7403 via judicial sale of the real property.

Mr. Sprenger acquired the subject property on November 5, 1996. *See* Exhibit 1. Shortly after acquiring the subject property a Deed of Trust (Rec. No. 96-0824103) which listed Bank of Arizona as the mortgagor was recorded (“1996 Mortgage”). *See* Exhibit 2.

1 An Assignment to Countrywide Home Loans Inc. was recorded the same day that the
2 Deed of Trust was recorded (Rec. No. 96-0824104). *See* Exhibit 3. On September 16,
3 2013, another Assignment of Deed of Trust (Rec. No. 20130829491) was recorded with
4 the Maricopa County Recorder. *See* Exhibit 4. This recording assigned Countrywide's
5 interest in the 1996 Mortgage to Green Tree Servicing, LLC, which is now known as
6 Ditech Financial LLC. On November 16, 2016, a Modification Agreement (Rec. No.
7 20160846596) was recorded naming Ditech Financial LLC f/k/a Green Tree Servicing
8 LLC as the lender ("2016 Modification"). *See* Exhibit 5.

9 This action was filed on January 6, 2020 (Dkt. 1). A Notice of Lis Pendens was
10 recorded with the Maricopa County Recorder on January 24, 2020 (Dkt. 6-1). Ditech
11 Financial LLC was properly served a copy of the summons and Complaint via their
12 registered agent for service of process (CT Corporation) on March 20, 2020 (Dkt. 8).
13 Default was entered against Ditech Financial LLC f/k/a Green Tree Servicing LLC on
14 May 6, 2020. Ditech Financial LLC f/k/a Green Tree Servicing LLC was named as a
15 party in this action pursuant to 26 U.S.C. § 7403(b) because it may claim an interest in
16 the subject property by virtue of the 1996 Mortgage, relevant assignments, and 2016
17 Modification that have been recorded.

18 In preparation for the United States' Motion for Default Judgment against Ditech
19 Financial LLC, the undersigned reviewed the Maricopa County Recorder's website's
20 Recorded Document Search, and found that a Corporate Assignment of Deed of Trust
21 (Rec. No. 20200177556) was recorded on March 2, 2020 with the Maricopa County
22 Recorder. *See* Exhibit 6 ("2020 Assignment"). This 2020 Assignment assigns the interest
23 of Ditech Financial LLC in the 1996 Mortgage and 2016 Modification to New
24 Residential Mortgage LLC. *See* Exhibit 6.

25 **Applicable Procedures.** Fed. R. Civ. P. 25(c) provides, "If an interest is
26 transferred, the action may be continued by or against the original party unless the court,
27 on motion, orders the transferee to be substituted in the action or joined with the original

1 party. The motion must be served as provided in Rule 25(a)(3).” Fed. R. Civ. P. 25(a)(3)
2 provides that “A motion to substitute, together with a notice of hearing, must be served
3 on the parties as provided in Rule 5, and on nonparties as provided in Rule 4.” As New
4 Residential Mortgage LLC is presently a nonparty, the United States will separately
5 request that the Court schedule a hearing date, so that the United States can serve both a
6 notice of hearing and this Motion in accordance with Fed. R. Civ. P. 4 on New
7 Residential Mortgage LLC, and in accordance with Fed. R. Civ. P. 5 on Ditech Financial
8 LLC.

9 **Substitution is appropriate.** The United States notes that Ditech was properly
10 named at the time of the filing of the Complaint, but recorded an Assignment after this
11 action was initiated. The 2020 Assignment was recorded after notice of this lawsuit was
12 recorded on January 24, 2020 but 18 days prior to Ditech being personally served with
13 the summons and Complaint on March 20, 2020. Substitution is permissive, as the action
14 can proceed against Ditech Financial LLC. *See* Fed. R. Civ. P. 25(c), *see also Hilbrands*
15 *v. Far East Trading Co., Inc.*, 509 F.2d 1321, 1323 (9th Cir.1975) (under Rule 25(c) “the
16 original party continues the action unless the new party in interest is substituted on
17 motion”). Thus, Ditech Financial continues as the proper party unless the new party in
18 interest is substituted on motion.

19 Given Ditech’s default, it is unclear if there still remains an outstanding balance by
20 virtue of the 1996 Mortgage (Rec. No. 96-0824103) and 2016 Modification (Rec. No.
21 20160846596). If no outstanding balance is owed on the 1996 Mortgage and 2016
22 Modification, it would follow that Ditech Financial LLC, who was properly served in this
23 action, chose to default and not participate in this action. However, the 2020 Assignment
24 to New Residential Mortgage LLC was recorded prior to the summons being served on
25 Ditech, so it is unclear if Ditech’s failure to participate was intended to default the newly
26 assigned New Residential Mortgage LLC. The undersigned has attempted to contact New
27 Residential Mortgage LLC, but these efforts have not been fruitful.

1 In order to ensure that all proper parties are named in this action to aid with selling
 2 the subject property free and clear of all interests of record, the United States of America
 3 moves to substitute New Residential Mortgage LLC for the original party Ditech
 4 Financial LLC f/k/a Green Tree Servicing LLC. In circumstances such as this, where loan
 5 ownership changes during litigation, substitution is proper. *See Burka v. Aetna Life Ins.*
 6 *Co.*, 87 F.3d 478, 484 (D.C. Cir.1996) (purchaser of mortgage properly added as a
 7 defendant under Fed. R. Civ. P. 25(c) in foreclosure action); *Salazar v. Trustee Corps*,
 8 08–CV–2142–IEG (NLS), 2009 WL 690185, at *2 (S. D. Cal. Mar. 12, 2009)
 9 (substituting FDIC for insolvent defendant bank under Rule 25(c) in action alleging that
 10 bank lacked right to foreclose).

11 In the alternative to substituting New Residential Mortgage LLC for Ditech
 12 Financial LLC f/k/a Green Tree Servicing LLC, the Court may instead join New
 13 Residential Mortgage LLC with Ditech Financial pursuant to Rule 25(c). This would
 14 provide New Residential Mortgage LLC with an opportunity to participate in this
 15 foreclosure action and assert any interest it may claim in the real property, while allowing
 16 the Court to proceed with entering default judgment against Ditech, finding that it has no
 17 claim or lien interest in the property, and is not entitled to any of the sale proceeds.

18 WHEREFORE, the United States respectfully requests that the Court GRANT this
 19 motion for substitution and enter an order substituting New Residential Mortgage LLC
 20 for Ditech Financial LLC f/k/a Green Tree Servicing LLC pursuant to Fed. R. Civ. P.
 21 25(c).

22 Respectfully submitted this 2nd day of November, 2020,

23 RICHARD E. ZUCKERMAN
 24 Principal Deputy Assistant Attorney General

25 /s/ Nithya Senra
 26 NITHYA SENRA (CA SBN 291803)
 27 Trial Attorney, Tax Division
 U.S. Department of Justice
Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2020, I electronically filed the foregoing Motion and attached Exhibits with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Todd Sheridan, todd.sheridan@azag.gov
Attorney for State of Arizona

and I hereby certify that on the same date I have mailed the documents by United States Postal Service to the following non-CM/ECF participants

Dennis J. Sprenger
5108 E. Juniper Ave
Scottsdale, AZ 85254

Ditech Financial LLC
c/o CT Corporation System
3800 N. Central Ave, Suite 460
Phoenix, AZ 85012
Statutory Agent

New Residential Mortgage LLC
c/o CT Corporation System
3800 N. Central Ave, Suite 460
Phoenix, AZ 85012
Statutory Agent

/s/ Nithya Senra
NITHYA SENRA
Trial Attorney, Tax Division
United States Department of Justice,